

ATTACHMENT

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

December 12, 2017

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Batalla Vidal et al. v. Baran et al.,
No. 1:16-cv-04756 (NGG) (JO)

Dear Judge Garaufis:

We write to oppose Defendants' request to extend their time to answer or otherwise respond to the Third Amended Complaint ("TAC") to January 10, 2018. ECF No. 115. As previously communicated to Defendants' counsel, Plaintiffs have no objection to an extension to December 29, 2017, with Plaintiffs' opposition to a renewed motion to dismiss still due January 13 and argument on January 18, 2018.

Defendants have already moved to dismiss four of the five claims set forth in the TAC, *see* ECF No. 95-1, which are unchanged from Plaintiffs' Second Amended Complaint. *See also* Memorandum and Order dated Nov. 9, 2017, ECF No. 104, at 48 ("The court RESERVES RULING on Defendants' motion to dismiss for failure to state a claim."). To re-submit their brief regarding these four claims is not onerous. As for Plaintiffs' revised procedural due process claim, the only claim not in the Second Amended Complaint, Defendants fail to establish why they require thirty-one days to brief this single claim.

Moreover, granting Defendants thirty-one days to resubmit their prior briefing and address one new claim would interfere with the schedule set by this Court, which synchronizes briefing in this case and *State of New York v. Trump*, No. 17-CV-5228. Extending the government's deadline to respond to the TAC to December 29, by contrast, would provide Defendants sufficient time to brief the single new claim and preserve the Court's underlying schedule, whereby opposition to all motions by all parties is still due January 13, with argument still on January 18.

Despite conferrals, Defendants have not resolved the problems surrounding renewal applications submitted on or before October 5, 2017. Plaintiffs thus filed their TAC expeditiously, so as to avoid disrupting adjudication of the government's motion to dismiss and Plaintiffs' motion for class certification, both of which depend on allegations in the operative pleadings, with a last-minute reset on January 5. *See* Minute Entry (Nov. 17, 2017) (allowing amendment "no later than" January 5).

The condensed scheduling orders in this case are the result of Defendants' refusal to adjust their own deadlines for the termination of DACA, despite abundant good cause. The government's obstinacy should not be rewarded with unnecessary delay in the progress of this case.

Very truly yours,

/s/ Michael J. Wishnie

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